

HOUSE JUDICIARY COMMITTEE AMENDMENT NO. 1

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1799

House Bill No. 1810

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-2-103(a), is amended by deleting in subdivision (1) the language and punctuation "or, if the child is likely to become a public charge,".

SECTION 2. Tennessee Code Annotated, Section 36-5-101(a), is amended by deleting the words, symbols, numbers, and punctuation "set in § 47-14-121." in the third sentence in subdivision (5) and by adding the following language before the last sentence in subdivision (5):

of twelve per cent (12%) per annum. All interest which accumulates on arrearages shall be considered child support.

SECTION 3. Tennessee Code Annotated, Section 36-5-103, is amended by adding the following as subsection (e):

(e) The commissioner of the department of human services is expressly authorized to issue an administrative order of income assignment to the commissioner of the department of employment security against any wages or wage benefits to which an obligor is entitled. Such administrative order shall be based upon and issued pursuant to an order from a court of competent jurisdiction or pursuant to state or local law, shall be deemed to be legal process in the nature of a garnishment pursuant to 42 U.S.C. 662(e), and shall direct the payment of child or spousal support by an obligor parent.

(1) Administrative orders of income assignment issued pursuant to the authority of this part may, in the discretion of the commissioner of human

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services, be delivered to a representative of the commissioner for the purpose of execution and such representative shall have the power and authority to levy and execute such administrative order.

(2) The administrative order of income assignment authorized by this section may be directed to, and effectively served upon, the commissioner of the department of employment security by electronically transmitted data to compel the assignment of unemployment benefits in order to satisfy the legal obligation of obligor parents to provide child support payments. The transmission of any such order by the commissioner of human services shall be certification by the commissioner of the existence of the underlying court order and that the procedural requirements for notice to the obligor parent as required by §§ 36-5-501 et seq. have been satisfied. The administrative order shall show the amount to be deducted from the obligor's unemployment compensation benefits by the department of employment security so as to comply with the underlying court order, and with any applicable statutes, rules, regulations, or inter-departmental agreements and, when necessary, the order shall contain the last known address of the obligor parent.

(3) The state child support enforcement computer system records shall be the official records of child support orders and child support-related spousal support orders and payment records for purposes of this subsection.

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(4) If it is determined that the department of employment security has erroneously or wrongfully withheld benefits from an individual and delivered such benefits to the department of human services pursuant to a commissioner's order of income assignment, the department of human services will pay the correct amount to the individual to correct the erroneous payment.

SECTION 4. Tennessee Code Annotated, Section 36-5-402, is amended by deleting subsections (a) and (e) in their entirety and by substituting instead the following new subsections (a) and (e), respectively:

(a)(1) Hearings in all child support cases which are not being enforced pursuant to the provisions of Title IV-D of the Social Security Act shall be heard within a reasonable period of time not to exceed forty-five (45) days of the service of process in each county in the state.

(2) Hearings in all Title IV-D support cases which seek to establish or enforce support shall be heard within the time frames established by federal child support regulations. The department of human services shall send notice of the time frames as they may be amended to the director of the administrative office of the courts who shall send such notice to all courts of the state with child or spousal support jurisdiction. The director of the administrative office of the courts shall send such notice to the courts within thirty (30) days of the date of notice from the department and the time frames shall then become effective thirty (30) days after the date of the notice from the director and

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shall apply to all actions to establish or enforce support initiated on or after the effective date.

(e) The appointment of referees in juvenile court which may be necessary to meet the provisions of this section shall be governed by the provisions of title 37, chapter 1.

SECTION 5. Tennessee Code Annotated, Section 36-5-501, is amended by deleting subdivision (5) of subsection (a) in its entirety.

SECTION 6. Tennessee Code Annotated, Section 36-5-501, is amended by deleting the first and second sentences of subdivision (1) of subsection (b) and by substituting instead the following language, and by designating each subsequent sentence of subdivision (1) as separate paragraphs (C)-(G):

(1)(A) In all cases being enforced under Title IV-D of the Social Security Act in which an immediate assignment of income has not been previously ordered and in which a parent who is ordered to pay child support is in arrears as defined in this subdivision and as reflected in the records of the clerk of court or the records of the department of human services, the clerk of the court or the department of human services, or the department's contractor in Title IV-D child support cases shall, without the necessity of an affidavit, issue an advance notice of income assignment within fifteen (15) calendar days of the date the support payment becomes in arrears if the address of the parent in arrears is known, or within fifteen (15) calendar days of locating the absent parent.

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(B) In all other cases where the child support payments were ordered to be paid directly to a parent or guardian or custodian of the child or children, and the child support payments are in arrears as defined in this subdivision, the parent, guardian or custodian may, by affidavit filed with the clerk, request that an advance notice of income assignment be sent by the clerk of the court to the obligor. The notice shall be sent by the clerk within fifteen (15) calendar days of the date the affidavit is completed if the address of the parent in arrears is known or within fifteen (15) calendar days of locating the absent parent.

SECTION 7. Tennessee Code Annotated, Section 36-5-501(f), is amended by deleting the words "withholding taxes and FICA" and by substituting instead the words and punctuation "FICA, withholding taxes, and a health insurance premium which covers the child."

SECTION 8. Tennessee Code Annotated, Section 37-1-151, is amended by designating the current language as subsection (a) and by adding the following new subsection:

(b)

(1) Notwithstanding the provisions of subsection (a), placement of a child in the custody of an agency of the state of Tennessee shall make the parents of that child liable for support from the effective date of the court's order. The court's placement of the child's custody with the state of Tennessee shall be deemed as an automatic application by the state of Tennessee, as custodian of the child, for child support services from the department of human services' Title IV-D child support program.

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(2) In all cases in which the court places physical custody of any child with an agency of the state of Tennessee, and if no prior orders for the support of the child by each parent exist, the court shall immediately order child support or shall set a hearing, which hearing shall be held within forty-five (45) days of the date the child's custody is placed with the state of Tennessee, for the purpose of establishing child support and the provision of medical care, to be paid by each parent to the state of Tennessee for the child placed in the state's custody by the court. Such hearing may be set on the court's next regular child support docket within the forty-five (45) day period in accordance with the provisions of subdivision (3).

(A) The parents and the Title IV-D office which is enforcing child support under Title IV-D of the Social Security Act for the county from which the child is placed shall receive at least ten (10) calendar days notice of the child support hearing date unless child support was ordered at the custody hearing.

(B) The notice to the parents shall be in writing and may be given at the time of the hearing at which the child is placed in the custody of the state of Tennessee, and shall include a subpoena to each parent to bring to court any documents showing evidence of income, including, but not limited to, pay stubs, W-2 forms, or income tax returns. If not given to the parents at the hearing at which custody is placed with the state of Tennessee, the notice and subpoena shall be sent by mail to the parents or

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served upon them personally within five (5) working days of the date of the custody hearing, unless child support is ordered at the custody hearing.

(C) Unless child support is ordered at the custody hearing, within five (5) working days of the date of the custody hearing at which the child is placed in the custody of the state of Tennessee, the clerk shall by mail, personal delivery, or by electronic means if the clerk participates in the statewide child support enforcement computer system pursuant to title 36, notify the office which is enforcing child support under Title IV-D of the Social Security Act for the county from which the child is placed of the date of the child support hearing, the names, addresses, and social security numbers of the parents and child. If support was ordered at the time of the custody hearing, the clerk shall notify the Title IV-D office of the amount of support which was ordered.

(4)

(A) At any hearing at which support is ordered, the court shall set child support as the evidence demonstrates is appropriate and in accordance with the child support guidelines established pursuant to § 36-5-101(e), and the court shall order the parents to pay the premium for health insurance for the child if the insurance is available at a reasonable cost, or the court shall order the parents to pay a reasonable portion of the child's medical costs. The order for support and for medical care shall be retroactive to the date that custody of the child was placed with the state of Tennessee by any order of the court.

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(B) The court shall order the child support payments and any payments which are ordered by the court to be made by the parents to the state of Tennessee to offset the child's medical costs to be paid by the parents to the clerk, or to the department of human services if the clerk is not participating in the statewide child support enforcement computer system pursuant to title 36. The court shall order the health insurance premiums ordered to be paid by the parents to be directed by them to the health insurance provider for the child or to be deducted from the parent's income as provided in § 36-5-501(a)(3).

(C) The court shall further order the parents of the child to provide to the state of Tennessee any information concerning health insurance benefits for which the child may be eligible through the parent's employer or through a private insurance plan held by the parent, or through TennCare, or through any other publicly funded health insurance program for which the parent or the child may be eligible, and the court shall direct the parents to provide all information necessary to establish support and medical care through income assignment, including the names and addresses of all employers, and the parents' social security numbers.

(5) The court shall order support paid by income assignment and by all other means provided for the support of children as may be necessary as provided in parts 1-6 of chapter 5 of title 36 and the court may enforce its orders as provided therein.

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(6)

(A) If any prior order for support exists for a child who is placed in the custody of the state of Tennessee in which the obligor was ordered to pay child support to the office of the clerk, the office which enforces child support pursuant to Title IV-D of the Social Security Act may certify to the clerk of that court in which the current order of support exists that the child for whom the support was ordered is in the custody of the state of Tennessee, and the clerk shall immediately, without further order of any court, forward all payments by the obligor to the department of human services for distribution.

(B) If the obligor is currently paying child support directly to the obligee under a support order which exists at the time the child is placed in the custody of the state of Tennessee, the court shall order the obligor to begin directing payments of support directly to the clerk of the juvenile court, or if the clerk is not participating in the statewide child support enforcement computer system pursuant to title 36, to the department of human services.

(C) When the child is no longer in the physical custody of the state of Tennessee, the Title IV-D office shall notify the clerk of the court to which it had sent the certification, or the department of human services if the clerk is not participating in the statewide child support enforcement computer system, and shall notify the obligor. Until otherwise ordered by the court which had originally

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set the support or which currently has jurisdiction to set support, the child support shall thereafter be paid by the obligor to the person to whom the child support obligation was paid prior to the child's placement in the custody of the state of Tennessee.

(D) Any child support funds remaining with the state of Tennessee after the child is returned to the physical custody of either parent or other custodian by court order shall be returned to the custodial parent or other custodian named in the order for use in the care of the child after reimbursement to the state of such costs incurred for the child's care by the state which are not otherwise prohibited by state or federal law or regulation.

. SECTION 9. Section 6 of this act shall take effect upon implementation of the department of human services' child support enforcement computer system or January 1, 1996, whichever is earlier, and the remaining Sections of this act shall take effect on July 1, 1995, the public welfare requiring it.